



Eden Environmental Citizen's Group, LLC

October 7, 2019

Via US Mail, Certified USPS Tracking No. 9407 1118 9956 1991 8205 85

Corey Casey
California Mantel & Fireplace, Inc.
4141 N. Freeway Blvd.
Sacramento, CA 95834

Via US Mail

Stephen J. Casey
Agent for Service
California Mantel & Fireplace, Inc.
4141 N. Freeway Blvd.
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Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")

To Officers, Directors, Operators, Property Owners and/or Facility Managers of California Mantel & Fireplace, Inc.:

This letter is being sent to you on behalf of Eden Environmental Citizen's Group, LLC ("EDEN") to give legal notice that EDEN intends to file a civil action against California Mantel & Fireplace, Inc. ("Discharger" or "California Mantel"), and its Facility Manager and President/CEO Cory Casey and Stephen Casey for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the California Mantel facility located at 4141 N. Freeway Blvd. in Sacramento, California ("the Facility" or "the site").

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

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EDEN formally registered as a limited liability company (LLC) association with the California Secretary of State on June 22, 2018; however, since at least July 1, 2014, EDEN has existed as an unincorporated environmental citizen's association with members who remain associated with EDEN as of the date of this Notice.

As discussed below, the Facility's discharges of pollutants degrade water quality and harm aquatic life in the Facility's Receiving Waters, which are waters of the United States and described in Section II.B, below. EDEN has members throughout California. Some of EDEN's members live, work, and/or recreate near the Receiving Waters and use and enjoy the Receiving Waters for surfing, kayaking, camping, fishing, boating, swimming, hiking, cycling, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study.

At least one of EDEN's current members has standing to bring suit against California Mantel, as the unlawful discharge of pollutants from the Facility as alleged herein has had an adverse effect particular to him or her and has resulted in actual harm to the specific EDEN member(s).

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of certain individual EDEN members have been, are being, and will continue to be adversely affected by the failure of California Mantel to comply with the General Permit and the Clean Water Act.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

I. THE SPECIFIC STANDARD, LIMITATION OR ORDER VIOLATED

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB")] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around January 11, 2008, California Mantel submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility. On or around August 24, 2015, California Mantel submitted an NOI to be authorized to discharge storm water from the Facility under the 2015 Permit. California Mantel's assigned Waste Discharger Identification number ("WDID") is 5S34I021405.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, California Mantel has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377; the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

II. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is California Mantel's permanent facility address of 4141 N. Freeway Blvd. in Sacramento, California.

California Mantel Facility is a gypsum and concrete manufacturer. The Facility produces mantels by mixing concrete, transferring it to a pump and spraying it into rubber molds. Facility operations are covered under Standard Industrial Classification Code (SIC) 3273.

Based on the EPA's Industrial Storm Water Fact Sheet for Sector E - Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities, polluted discharges from operations at the Facility contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, and arsenic; chemical oxygen demand ("COD"); biochemical oxygen demand ("BOD"); total suspended solids ("TSS"); benzene; gasoline and diesel fuels; fuel additives; coolants; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Information available to EDEN indicates that the Facility's industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA's Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

B. The Affected Receiving Waters

The Facility discharges into Steelhead Creek, a tributary of the Sacramento River (“Receiving Waters”).

The Sacramento River is a water of the United States. The CWA requires that water bodies such as the Sacramento River meet water quality objectives that protect specific “beneficial uses.” The Central Valley Regional Water Board has issued its *Water Quality Control Plan for the Sacramento and San Joaquin River Basins* (“Basin Plan”) to delineate those water quality objectives.

The Basin Plan identifies the “Beneficial Uses” of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Process Supply (PRO), Industrial Service Supply (IND), Navigation (NAV), Water Contact Recreation (REC-1), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Migration (MIGR), and Spawning, Reproduction, and/or Early Development (SPWN).

A water body is impaired pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), when its Beneficial Uses are not being achieved due to the presence of one or more pollutants.

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Deficient/Invalid SWPPP and/or Site Map

California Mantel’s current Storm Water Pollution Prevention Plan (“SWPPP”) and Site Map for the Facility are both inadequate and fail to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

- (a) The Site Map does not include the minimum required components for Site Maps as indicated in Section X.E of the General Permit. Specifically, the Site Map fails to include the following:
 - 1) notes, legends, a north arrow and other data to ensure the map is clear, legible and understandable;
 - 2) the facility boundary;

- 3) on-facility surface water bodies, if any;
 - 4) nearby water bodies such as rivers, lakes and creeks;
 - 5) locations and descriptions of structural control measures that affect industrial storm water discharges, authorized NSWDS and/or run-on, if any;
 - 6) identification of all impervious areas of the facility, including paved areas, buildings, covered storage areas or other roofed structures;
 - 7) locations where materials are directly exposed to precipitation and the locations where identified significant spills or leaks have occurred;
 - 8) all areas of industrial activity subject to the General Permit.
- (b) The SWPPP fails to include the **date of each SWPPP Amendment** (Section X.A.10);
- (c) The SWPPP is invalid because it was **not certified and submitted by the Facility's Legally Responsible Person**. In fact, the SWPPP was not certified by anyone. Pursuant to Section XII.K of the General Permit, all Permit Registration Documents (PRDs), including SWPPPs, must be certified and submitted by the Facility's authorized Legally Responsible Person.
- The SWPPP is further invalid because it was prepared in 2010 under the State Water Resources Control Board Water Quality Order 96-DWQ and has not been updated to incorporate the requirements of the 2014 General Permit;
- (d) The SWPPP fails to include an appropriate discussion of the **Industrial Materials** handled at the facility, including the locations where the materials are stored, received, shipped and handled, and the quantities and handling frequency of the Industrial Materials (Sections X.A.3, X.F, X.G.1.a);
- (e) The SWPPP fails to discuss in detail **Facility operations and all industrial processes** at the facility, including manufacturing, cleaning, maintenance, recycling, disposal, and any other activities related to each industrial process; and the type, characteristics, and approximate quantity of industrial materials used in or resulting from the process. Areas protected by containment structures and the corresponding containment capacity are also required to be identified and described. (X.G.1.a);

- (f) The SWPPP fails to include an adequate description of **Potential Pollutant Sources** and narrative assessment of all areas of industrial activity with potential industrial pollutant sources, including Industrial Processes, Material Handling and Storage Areas, Dust and Particulate Generating Activities, Significant Spills and Leaks, Non-Storm Water Discharges and Erodible Surfaces (Section X.G);
- (g) The **Minimum Best Management Practices** (BMPs) as indicated in the SWPPP are insufficient and do not comply with the minimum required categories as listed in the General Permit, which include Good Housekeeping, Preventive Maintenance, Spill and Leak Prevention and Response, Material Handling and Waste Management, Erosion and Sediment Controls, Employee Training Program and Quality Assurance and Record Keeping (Section X.H.1);
- (h) The SWPPP fails to identify all **Non-Storm Water Discharges (NSWDs)** sources and drainage areas, including an evaluation of all drains (inlets and outlets) that identifies connections to the storm water conveyance system, and a description of how all unauthorized NSWDs have been eliminated (Section X.G.e);
- (i) The SWPPP fails to include an appropriate **Monitoring Implementation Plan**, including an identification of team members assigned to conduct monitoring requirements, a description of all discharge locations, a discussion of Visual Observation procedures, justifications for alternative discharge locations, if any, procedures for field instrument calibration instructions, and an example Chain of Custody form to be used when handling and shipping water quality samples to the lab (Section X.I);
- (j) The SWPPP fails to include an adequate discussion of the **Facility's receiving waters** (Section XI.B.6(e), Section X.G.2.ix); and,
- (k) The SWPPP fails to include an appropriate discussion of **drainage areas and Outfalls** from which samples must be taken during Qualified Storm Events (Section XI).

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

B. Failure to Update SWPPP

California Mantel entered Level 1 Status on July 1, 2017. The Level 1 ERA Report prepared by its QISP on September 17, 2018, indicated a number of recommended BMP additions and modifications that, pursuant to Section XII(C)(2)(a) of the General Permit, required the Facility to update its SWPPP on or before January 1, 2019.

As of the date of this Notice, California Mantel has failed to upload an amended SWPPP pursuant to Sections X(B) and XII(C)(2)(a) of the General Permit.

C. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

1. Failure to Conduct Visual Observations

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN believes that between July 1, 2015, and the present, California Mantel has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

2. Failure to Collect and Analyze the Required Number of Storm Water Samples

In addition, EDEN alleges that California Mantel has failed to provide the Regional Water Board with the minimum number of annual documented results of Facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each

reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

As of the date of this Notice, California Mantel has failed to upload into the SMARTS database system:

- a. Two storm water sample analyses for the time period July 1, 2015, through December 31, 2015;
- b. One storm water sample analysis for the time period January 1, 2016, through June 30, 2016;
- c. Two storm water sample analyses for the time period July 1, 2016, through December 31, 2016;
- d. Two storm water sample analyses for the time period July 1, 2017, through December 31, 2017;
- e. Two storm water sample analyses for the time period January 1, 2018, through June 30, 2018;
- f. Two storm water sample analyses for the time period July 1, 2018, through December 31, 2018; and,
- g. Two storm water sample analyses for the time period January 1, 2019, through June 30, 2019.

Furthermore, pursuant to data collected from the National Oceanic and Atmospheric Administration (“NOAA”), there were sufficient storm events occurring near 4141 N. Freeway Blvd. in Sacramento during Facility operating hours within the reporting years where required stormwater sample collections were missed to have allowed the Facility to collect at least the minimum number of storm water samples required by the General Permit.

3. Failure to Deliver Samples to a Laboratory within 48 Hours of Collection

Pursuant to Attachment H, Section 2 of the General Permit, Dischargers are to deliver storm water run-off samples to a qualified Laboratory within 48 hours of the date and time of physical sampling. California Mantel’s samples listed below were not delivered to the Facility’s Laboratory in that time frame:

Sample Date/Time	Date/Time Laboratory Received Sample
2/18/16 at 12:35 p.m.	2/22/16 at 9:10 p.m.
3/24/17 at 10:45 a.m.	3/27/17 at 9:20 p.m.

4. Failure to Upload Storm Water Sample Analyses within 30 Days

Section XI.B.11.a of the General Permit requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event.

California Mantel failed to upload into SMARTS within 30 days the following sampling and analytical results pursuant to Section XI.B.11.a of the General Permit:

Sample Date	Date of Laboratory Report	Date Uploaded into SMARTS	Length of Time Late
2/18/16	3/7/16	1/12/17	10 months
3/21/17	4/5/17	10/30/17	6 months
3/24/17	4/11/17	10/30/17	6 months

5. Failure to Analyze Storm Water Samples for the Correct Parameters

Section XI.B.6.c of the General Permit requires Dischargers to analyze for any additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment contained in the Facility's SWPPP. The Facility's SWPPP indicates that iron is an additional parameter to be included in the sampling process, as it is associated with the Facility's industrial operations.

California Mantel's laboratory analytical report for sample collected on February 18, 2016 failed to analyze for the required parameter of iron.

D. Falsification of Annual Reports Submitted to the Regional Water Board

Section XXI.L of the General Permit provides as follows:

L. Certification

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

N. Penalties for Falsification of Reports

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On October 30, 2017, California Mantel submitted its Annual Report for the Fiscal Year 2016-17. Cory Casey signed the Report under penalty of law. Mr. Cory Casey is either the current Legally Responsible Person ("LRP") or the Designated Authorized Representative ("DAR") for California Mantel.

Specifically, Mr. Casey responded "Yes" to Question No. 3 on the Annual Report ("Did you sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B?") However, as discussed above, California Mantel failed to collect and analyze the required number of storm water samples during the reporting year in question.

E. Late-Filed Annual Report/Failure to File Annual Reports

California Mantel has failed to comply with Section XVI.A of the General Permit, which provides as follows: "The Discharger shall certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year using the standardized format and checklists in SMARTS."

California Mantel's Annual Report for the reporting year 2015-16 was due on or before July 15, 2016. However, the Facility failed to file the Annual Report until February 1, 2017. Further, the Facility's Annual Report for the reporting year 2016-17 was due on or before July 15, 2017; and it was not filed until October 30, 2017.

California Mantel's Annual Report for the reporting year 2017-18 was due on or before July 15, 2018 and has not been filed as of the date of this Notice, notwithstanding the fact that

the Water Board issued two separate Notices of Non-Compliance to the Facility for failure to file the Report.

California Mantel's Annual Report for the reporting year 2018-19 was due on or before July 15, 2019. However, the Facility has failed to file the Annual Report as of the date of this Notice.

F. Deficient BMP Implementation

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that California Mantel has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

California Mantel's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

On July 1, 2017, the Facility entered Level 1 status for annual average exceedances of pH and iron.

On August 24, 2018, QISP Jodie Crandell evaluated the facility, pursuant to Exceedance Response Action requirements of the General Permit. The Level 1 ERA report certified on September 17, 2018 indicated the following BMP deficiencies:

1. Facility's Minimum BMPs and Advanced BMPs were deficient; specifically, sweeping frequency and thoroughness was inadequate in addressing metal and particulate issues;
2. Items and materials were not stored on pallets, possibly contributing to exceedances;
3. Iron racking contributed to exceedances; and,
4. Drain filters were old, clogged with sediment, and configured in a way that made it impossible to collect a sample after filtration, making the Facility's samples unrepresentative of the Facility's impact on storm water.

H. Discharges In Violation of the General Permit

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

1. Discharges in Excess of Technology-Based Effluent Limitations

The Industrial General Permit includes technology-based effluent limitations, which prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable (“BAT”) for toxic pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. (General Permit, Section X.H.)

The EPA has published Benchmark values set at the maximum pollutant concentration levels present if an industrial facility is employing BAT and BCT, as listed in Table 2 of the General Permit. The General Permit includes “Numeric Action Levels” (“NALs”) derived from these Benchmark values; however, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. (General Permit, Section I.M. (Finding 62)).

California Mantel’s exceedances of Benchmark values identified in the table listed below, indicate that it has failed and is failing to employ measures that constitute BAT and BCT, in violation of the requirements of the Industrial General Permit. EDEN alleges and notifies California Mantel that its storm water discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values as listed below.

These allegations are based on the Facility’s self-reported data submitted to the Regional Water Board. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

California Mantel’s ongoing discharges of storm water containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that it has not developed and implemented sufficient BMPs at the Facility. EPA Benchmarks are

relevant to the inquiry as to whether a facility has implemented BMPs. [*Cal. Sportfishing Prot. Alliance v. River City Waste Recyclers, LLC* (E.D.Cal. 2016) 205 F.Supp.3d 1128; *Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 925; *Waterkeepers Northern California v. AG Industrial Mfg. Inc.* (9th Cir. 2004) 375 F.3d 913, 919 (concentration levels in excess of EPA benchmarks are evidence supporting the citizen plaintiff's contention that defendant did not have appropriate BMPs to achieve BAT/BCT).]

California Mantel's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

2. Discharges in Excess of Receiving Water Limitations

In addition to employing technology based effluent limitations, the Industrial General Permit requires dischargers to comply with Receiving Water Limitations. Receiving Water Limitations found in Section VI(B) of the General Permit prohibit storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment.

Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment also constitute violations of the General Permit Receiving Water Limitation.

Applicable Water Quality Standards ("WQS") are set forth in the California Toxics Rule ("CTR") and the Regional Basin Plan. Exceedances of WQS are violations of the Industrial General Permit, the CTR, and the Basin Plan. Industrial storm water discharges must strictly comply with WQS, including those criteria listed in the applicable Basin Plan. (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).)

The Basin Plan establishes WQS for the Sacramento River and its tributaries, including but not limited to the following:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.
- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.

- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.

Information available to EDEN indicates that the Facility's storm water discharges contain elevated concentrations of specific pollutants, as listed below. These polluted discharges can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the General Permit Receiving Water Limitation.

Further, EDEN puts California Mantel on notice that the Receiving Water Limitations are independent requirements that must be complied with, and that carrying out the process triggered by exceedances of the NALs listed at Table 2 of the General Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality-based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a WQS, or whether it is causing adverse impacts to human health or the environment.

Section XX.B. of the General Permit provides that when a facility's industrial storm water discharges and/or authorized NSWDS are determined to contain pollutants that are in violation of Receiving Water Limitations contained in Section VI, the Discharger must conduct a facility evaluation to identify pollutant source(s) within the facility that are associated with industrial activity and whether the BMPs described in the SWPPP have been properly implemented, assess its current SWPPP, and certify via SMARTS any additional BMPs identified which are necessary in order to meet the Receiving Water Limitations.

EDEN alleges that from at least March 21, 2017 to the present, California Mantel has been in violation of the Receiving Water Limitations provision of Section VI of the General Permit, as evidenced by its exceedances of the applicable Water Quality Standards set forth in the Regional Basin Plan, indicated below.

Further, California Mantel has failed to comply with Section XX.B of the General Permit. Failure to comply with the additional Water Quality-Based Corrective Action requirements listed in Section XX.B is an additional violation of the General Permit.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations:

Sample Collection Date	Parameter	Unit	Sample Analysis Result	EPA Benchmark NAL	EPA Benchmark NAL Instantaneous Value	BASIN PLAN/CCR T22 Benchmark NAL value
2016-2017 Reporting Year						
3-21-17	pH	S.U.	5.5	N/A	Less than 6.0 Greater than 9.0	N/A
3-21-17	Iron	mg/L	2.1	1.0	N/A	0.3
3-21-17	pH	S.U.	5.0	N/A	Less than 6.0 Greater than 9.0	N/A
3-21-17	Iron	mg/L	0.88	1.0	N/A	0.3
3-24-17	pH	S.U.	6.5	N/A	Less than 6.0 Greater than 9.0	N/A
3-24-17	Iron	mg/L	1.4	1.0	N/A	0.3
3-24-17	pH	S.U.	5.5	N/A	Less than 6.0 Greater than 9.0	N/A
3-24-17	Iron	mg/L	1.2	1.0	N/A	0.3
FY 2016-17 Averages	pH	S.U.	5.63	N/A	<6, >9	N/A
	Iron	mg/L	1.4	1.0	N/A	0.3

G. Failure to Comply with Facility SWPPP

Section 5.4 of the Facility's SWPPP identifies the parameters for which the Facility's storm water run-off samples must be analyzed, including pH, oil & grease, total suspended solids and iron. As specified above, the storm water run-off samples the facility analyzed and uploaded into the SMARTS system for sample collected on February 18, 2016 failed to include a sample analysis for the required parameter of Iron.

Furthermore, Section X.H.g of the General Permit requires all Dischargers to develop and implement management procedures to ensure that appropriate staff implements all elements of the Facility's SWPPP, including the Monitoring Implementation Plan.

H. Failure to Properly Train Employees/Facility Pollution Prevention Team

Section X.D.1 of the General Permit requires each Facility to establish a Pollution Prevention Team responsible for assisting with the implementation of the requirements of the General Permit. The Facility is also required to identify alternate team members to implement the SWPPP and conduct required monitoring when the regularly assigned Pollution Prevention Team members are temporarily unavailable (due to vacation, illness, out of town business, or other absences).

Section X.H.f of the General Permit also requires that each Facility ensure that all Pollution Prevention Team members implementing the various compliance activities of the General Permit are properly trained in at least the following minimum requirements: BMP implementation, BMP effectiveness evaluations, visual observations, and monitoring activities. Further, if a Facility enters Level 1 status, appropriate team members must be trained by a QISP.

Based on the foregoing violations, it is clear that California Mantel has either not properly established its Pollution Prevention Team, or has not adequately trained its Pollution Prevention Team, in violation of Sections X.D.1 and X.H.f of the General Permit.

California Mantel may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entities responsible for the alleged violations are California Mantel, as well as employees of the Facility responsible for compliance with the CWA.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least October 1, 2014, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez
EDEN ENVIRONMENTAL CITIZEN'S GROUP
2151 Salvio Street #A2-319
Concord, CA 94520
Telephone: (925) 732-0960
Email: Edenenvcitizens@gmail.com (emailed correspondence is preferred)
Website: edenenvironmental.org

EDEN has retained counsel in this matter as follows:

XHAVIN SINHA
Sinha Law
1645 Willow Street, Suite 150
San Jose, CA 95125
Telephone: (408) 791-0432
Email: xsinha@sinha-law.com

To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Xhavin Sinha.

VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. **These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.**

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d) and California Code of Civil Procedure §1021.5, EDEN will seek to recover its pre and post-litigation costs, including all attorneys' and experts' fees and costs incurred (see *Southern California Alliance of Publicly Owned Treatment Works v. U.S. Environmental Protection Agency* (9th Cir. 2017) 853 F.3d 1076; *Vasquez v. State of California* (2008) 45 Cal.4th 243).

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages California Mantel's counsel to contact **EDEN's counsel** within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein. Please do not contact EDEN directly.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if California Mantel wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



AIDEN SANCHEZ
Eden Environmental Citizen's Group

Copies to:

Andrew Wheeler: wheeler.andrew@Epa.gov
Administrator, U.S. Environmental Protection
Agency

State Water Resources Control Board
Eileen Sobeck, Executive Director
eileen.sobeck@waterboards.ca.gov

Mayumi Okamoto, Office of Enforcement:
Mayumi.Okamoto@waterboards.ca.gov
stormwater@waterboards.ca.gov

Regional Administrator, U.S. EPA – Region 9
Jennifer Pierce: pierce.jennifer@epa.gov
Laurie Kermish: kermish.Laurie@epa.gov